IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.99 OF 2005

Smt.Indumati Gopala Amble ...Appellant

vs.

Sou Sheela Tanaji Atigre ...Respondent

Mr.H.S.Venegaonkar for the Appellant
Mr.Amit Shete i/b A.B.Borkar for the Respondent

CORAM: A.S.OKA,J.
DATE : MARCH 17,2005.

P.C.:

1. Heard the learned Advocate for the Appellant. The Appellant filed a suit against the Respondent contending that the sale deed executed by her on 12th May 1998 in favour of the Respondent was null and void, false and fabricated. The Trial Court dismissed the suit and decreed the counter claim made by the Respondent. The Appeal preferred by the Appellant has been dismissed by the District Court. The learned Counsel for the Appellant submitted that even after recording a finding that there was infirmity in the evidence of the Respondent, the Appellate Court held that the sale deed is legal and valid. The burden was on the Defendant to prove that the sale deed bears the thumb impression of the Appellant and no fault can be found if the Appellant failed to prove the same. He submitted that this is a fit case where order of remand is necessary.

2. The courts below have considered the oral evidence on record. The Appellant denied that the sale deed bears her thumb impression. Admittedly, the sale deed is duly registered under the Indian Registration Act, 1908. There was ample opportunity available to the Appellant to appoint expert and to lead her evidence. The Appellate Court has also referred to the fact that the sale deed is attested by the son of the Appellant and the Appellant did not examine the son as a witness.

3. The Appellant had gone to the Court for contending that the sale deed which was duly registered was not executed by her. The burden was on the Appellant-Plaintiff to prove the same. Therefore, the Appellant Plaintiff cannot take advantage of certain omissions in the evidence led by the Respondent. After considering the entire oral and documentary evidence on record, findings of fact have been recorded by the Courts below against the Appellant. Merely because some other view is possible to be taken on the same evidence is no ground to interfere in the Second Appeal under Section 100 of Code of Civil Procedure, 1908. Second Appeal is dismissed with no order as to costs.

4. At this stage the learned Advocate for the Appellant stated that the Appellant has complied with the money decree in the counter claim by depositing the necessary amount. He submitted that the Appellant is residing in the suit property

and considering the fact that her age is above 70 years, longer time to vacate be granted. The said request is opposed by the learned Counsel for the Respondent.

5. Considering the facts and circumstances of the case, notwithstanding with dismissal of the Second Appeal, decree for possession shall not be executed till 31st March 2006 subject to the Appellant filing usual undertaking in this Court within three weeks from today. If undertaking is not filed within stipulated period, decree for possession will become executable forthwith.

6. Parties to act upon an authenticated copy of this order.

JUDGE.